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14 *Attorneys for Plaintiffs and the Proposed Classes*

15 UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 DR. TIMOTHY COLLINS and SIDNEY
19 NAIMAN, individually and on behalf of all
20 others similarly situated,

21 Plaintiffs,

22 v.

23 TOTAL MERCHANT SERVICES, INC.,
24 QUALITY MERCHANT SERVICES, INC.
25 MICHAEL ALIMENTO and BOBBY
26 POWERS

27 Defendants.

Case No. 4:17-cv-03806-CW

**PLAINTIFFS' NOTICE OF MOTION
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO STRIKE *PRO SE*
ANSWER OF QUALITY MERCHANT
SERVICES, INC.**

JURY TRIAL DEMAND

Complaint Filed: July 5, 2017

DATE: February 6, 2018

TIME: 2:30 p.m.

LOCATION: TBD

**CASE NO. 3:17-CV-03806-CW - PLAINTIFF'S NOTICE OF MOTION AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO
STRIKE *PRO SE* ANSWER OF QUALITY MERCHANT SERVICES, INC.**

1 TO: THE CLERK OF THE COURT; and

2 TO: DEFENDANT QUALITY MERCHANT SERVICES, INC.;

3 PLEASE TAKE NOTICE that on February 6, 2018, at 2:30 p.m., in a courtroom to be
4 assigned prior to the hearing of the Oakland Courthouse for the U.S. District Court for the
5 Northern District of California, 1301 Clay Street, Oakland, CA 94612, Plaintiff will move to
6 strike the *pro se* filed Answer of Quality Merchant Services, Inc., as Quality Merchant Services,
7 Inc., an active corporation, must appear through counsel.
8

9 This motion will be based on: the following Memorandum of Points and Authorities, the
10 Declaration Anthony I. Paronich, the records and file in this action; and on such other matter as
11 may be presented before or at the hearing of the motion.
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14 **STATEMENT OF ISSUES TO BE DECIDED**

- 15 1. Can an active corporation appear *pro se* in this Court?
16

17 **STATEMENT OF RELEVANT FACTS**

18 Plaintiff Sidney Naiman filed this action against Total Merchant Services, Inc. alleging
19 that it hired co-defendants Quality Merchant Services, Inc. and its owner Michael Alimento to
20 send pre-recorded telemarketing calls in violation of the Telephone Consumer Protection Act,
21 47 U.S.C. § 227 *et seq.* (“TCPA”) in order to generate new business.¹ See Declaration of
22 Anthony I. Paronich at ¶ 2. On December 19, 2017, Quality Merchant Services, Inc. filed an
23

24 ¹ The Plaintiffs’ Complaint also alleges that Mr. Bobby Powers sent unsolicited facsimile
25 advertisements on behalf of Total Merchant in violation of the TCPA, but that claim is not
26 implicated in this motion.

27 **CASE NO. 3:17-CV-03806-CW - PLAINTIFF’S NOTICE OF MOTION AND
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1 Answer. *See* ECF No. 48. However, that Answer was signed by Michael Alimento, who claimed
 2 to be "Vice President" of Quality and was not signed by an attorney. *Id.* at ¶ 3.

3 ARGUMENT

4 It is black letter law and an explicit rule of this District that a corporation can only appear
 5 in court through an attorney. Civil Local Rule 3-9(b) states that "[a] corporation, unincorporated
 6 association, partnership or other such entity may appear only through a member of the bar of this
 7 Court." Civil L.R. 3-9(b)." This regulation reflects the longstanding rule that a corporation
 8 may only appear in court through an attorney." *BMW of N. Am., LLC v. Dinodirect Corp.*, 2012
 9 U.S. Dist. LEXIS 89271 at *13-14 (N.D. Cal. June 27, 2012) citing *In re Am. W. Airlines*, 40
 10 F.3d 1058, 1059 (9th Cir. 1994). "Non-attorneys, including a corporation's president and sole
 11 shareholder, are barred from representing a corporation." *United States CFTC v. Castillo*, 2007
 12 WL 2088372 at *1 (N.D. Cal. 2007).

13 While Courts in this District have held that under such circumstances a default may
 14 enter², the plaintiffs are also pursuing overdue discovery responses from Quality and Mr.
 15 Alimento to determine, *inter alia*, the size of plaintiffs' putative class and the relationship
 16 between Quality and the company it sent the pre-recorded messages for, co-defendant Total
 17 Merchant Services, Inc. As such, the plaintiffs do not oppose Quality filing an answer through
 18 counsel within seven days of this Court's Order. If the Court would prefer a default motion to be
 19 filed, the plaintiffs will do that within seven days of this Court's Order.

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² *See BMW of N. Am., LLC* at *15.

CONCLUSION

WHEREFORE, Quality Merchant Services, Inc.'s Answer should be stricken and Quality should be Ordered to file a new Answer through counsel within 7 days after this Order or be subject to a default judgment. A proposed Order is being submitted as Exhibit 1.

RESPECTFULLY SUBMITTED AND DATED this 20th day of December, 2017.

By: /s/ Anthony I. Paronich
Anthony I. Paronich

CERTIFICATE OF SERVICE

I, Anthony I. Paronich, hereby certify that on December 20, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record. I have also sent the defendants who are not registered through the CM/ECF system an electronic copy.

BRODERICK & PARONICH, P.C.

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